

UNITED STATES
v.
W. C. DEAN AND MILDRED W. DEAN

IBLA 73-373

Decided December 21, 1973

Appeal from a decision by Administrative Law Judge Graydon E. Holt dismissing a contest to determine the validity of a millsite.

Affirmed.

Mining Claims: Contests--Mining Claims: Mill
Sites--Rules of Practice: Government Contests

Although a millsite may be declared invalid when its only use is in connection with a mining claim which is declared invalid, a millsite can be contested separately and declared invalid when evidence establishes it is not being used for mining or milling purposes, independent of the issue of the validity of the mining claim.

Mining Claims: Contests--Mining Claims: Mill Sites

A millsite is used for mining or milling purposes if the use is a function or utility intimately associated with the removal, handling or treatment of the ore from the vein or lode. Some step in or directly connected with the process of mining or some feature of milling must be performed.

Mining Claims: Contests--Mining Claims: Mill Sites

An Administrative Law Judge may properly dismiss a millsite contest if the Government makes an inadequate prima facie showing that the millsite is invalid either as a dependent or independent claim, and evidence shows use and occupation of the site for mining and milling purposes.

APPEARANCES: Demetrie L. Augustinos, Esq., Office of the General Counsel, U.S. Department of Agriculture, Albuquerque, New Mexico, for the United States; John F. Mills, Esq., Twitty, Sievwright, and Mills, Phoenix, Arizona, for appellee.

OPINION BY MRS. THOMPSON

The Forest Service, United States Department of Agriculture, appearing on behalf of the United States, has appealed from a decision by Administrative Law Judge Graydon E. Holt dated April 20, 1973, dismissing a contest to determine the validity of the Dean Millsite located in Sec. 20, T. 11 N., R. 2 W., Yavapai County, Arizona. This millsite is within the Prescott National Forest and was located on December 18, 1969, and amended June 8, 1970. It is associated with seven lode mining claims located within several miles of the millsite.

The Bureau of Land Management, at the request of the Forest Service, filed a contest complaint charging that:

- a. The Dean Millsite claim is not occupied by a mill or reduction works for ores.
- b. The millsite is not being used for purposes related to mining and milling.

The Judge, in dismissing the complaint, ruled that the contestant did not make a prima facie showing that all the lode claims associated with the millsite were invalid and failed to establish that the millsite is not being used for mining or milling purposes.

He succinctly summarized the facts in this case:

The Dean Millsite was located on December 18, 1969, and amended June 8, 1970 (Tr. 7). It is within the Prescott National Forest approximately 15 miles southeast of Kirkland Junction, Arizona. Previously, Mr. Dean had a mill site some distance away. After making preliminary improvements on the new site in 1971 he removed his improvements from the old site (Tr. 24). At the time of the hearing the present mill site contained a small mill with a primary jaw crusher, a secondary crusher, buck elevators, roll crusher, conveyors, a ball mill, shaker table, amalgamation drum, a retort, tables, a gold trap, and a sluice box (Tr. 25). There were also a number of improvements consisting of a trailer with a frame addition making a building 20 x 65 feet, a plywood shed 8 x 14 feet, a tool shed 16 x 40 feet, two water towers, and a rock house (Tr. 9) (Exhs. 5-A - 5-D). The

photographs received in evidence amply verify the existence of these improvements (Exhs. 5, and A through G). In addition there are various mining tools and equipment on the site.

In addition, a small blacksmith shop is on the site, a dump truck is driven almost every day from the mining claims to the millsite and several persons besides the Deans are working on the mining and millsite claims. A small amount of ore has been processed through the mill.

The Forest Service contends that the Judge improperly required it to present a prima facie case of invalidity of contestee's associated mining claims as a prerequisite to invalidating the millsite. Whether such a showing is necessary depends on the other evidence in a millsite contest, and the status of the case. A millsite dependent on a lode claim may be maintained on nonmineral land not contiguous to a vein or lode if it is used or occupied for mining or milling purposes by the proprietor of such vein or lode. Act of May 10, 1872, 17 Stat. 96, as amended, 74 Stat. 7, 30 U.S.C. § 42(a) (1970). In order to receive a patent for a millsite dependent on an unpatented lode claim, the applicant for patent must show a discovery on the associated lode claim. United States v. Larsen, 9 IBLA 247, 274 (1973); United States v. Coston, A-30835 (February 23, 1968). If the mining claim has already been patented, he must show mining operations on the associated patented claim. United States v. Wedertz, 71 I.D. 368, 373 (1964). A dependent millsite may be contested, however, without contesting the validity of unpatented mining claims with which it is connected. Although a millsite may be declared invalid when its only use is in connection with a mining claim which is declared invalid, United States v. Mellos, 10 IBLA 261, 268 (1973); United States v. Coston, supra at 3, a millsite can be contested separately and declared invalid when evidence establishes it is not being used for mining and milling purposes independent of the issue of the validity of the mining claims. United States v. Polk, A-30859 at 3-4 (April 17, 1968).

Where the use or occupation is related to a lode claim, the showing must be of

* * * a function or utility intimately associated with the removal, handling or treatment of the ore from the vein or lode. Some step in or directly connected with the process of mining or some feature of milling must be performed.

Alaska Copper Co., 32 L.D. 128, 131 (1903) (emphasis in original).

Here, among other uses, contestees showed that tools used in working the claims and ore are stored at the millsite, a stone house is used to board employees, a mill is on the land and has been used, and frequent trips are made between the millsite and the mining claims. The uses and improvements are typical of mining and milling operations. The millsite appears to be used for mining or milling purposes. E.g., United States v. Skidmore, 10 IBLA 322, 327 (1973). The conclusion of whether the activity is actually mining or milling in connection with the lode claims cannot be determined, however, without determining the nature of the activity on the associated claims and their validity.

Where contestees present proof of use and occupancy of a millsite which appears related to mining or milling in connection with lode claims, then the issues raised are whether there are mining activities conducted on the associated claims and whether they are valid claims. This requires evidence in addition to proof of the activities on the millsite. The Government made no prima facie showing regarding five of the seven associated mining claims. The contestees presented general testimony of use of the site with the claims. We cannot conclude that the activity is not actually mining or milling in connection with the lode claims without further proof of their invalidity. Also, the presence of a mill, if operable and used as a quartz mill or reduction works, may be sufficient to maintain the site as an independent millsite under the last sentence of 30 U.S.C. § 42(a) (1970). In any event, based upon the evidentiary record before him, the Judge properly dismissed the Government's contest of this millsite, as there was an inadequate prima facie showing that the millsite was invalid either as a dependent or an independent claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson, Member

We concur:

Douglas E. Henriques, Member

Anne Poindexter Lewis, Member

